

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93-264

In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket No. 92-266 ✓

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Order

Adopted: May 14, 1993;

Released May 14, 1993

By the Commission: Commissioner Barrett concurring and issuing a statement.

1. On April 1, 1993, the Commission adopted an order in this docket freezing until August 3, 1993, rates for cable services subject to regulation under the Cable Television Consumer Protection and Competition Act of 1992.¹ On that same day, the Commission established rules implementing rate regulation of cable service as required under the Cable Act. The text of our substantive rate regulation decision, including the language of our rules and requisite forms, was released May 3, 1993.² That decision provided that our cable rate regulations would become effective on June 21, 1993, approximately thirty days after publication in the Federal Register.

¹ Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order, MM Docket No. 92-266, FCC 93-176 (released Apr. 1, 1993), 58 Fed. Reg. 17530 (Apr. 5, 1993) (Freeze Order), revised Erratum, FCC 93-176, 58 Fed. Reg. 19626 (Apr. 15, 1993); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 3, 9, 14, 106 Stat. 1460 (1992), amending §§ 623, 612 and 622(c) of the Communications Act, as codified at 47 U.S.C. §§ 543, 532 and 542(c) (Cable Act).

² Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177 (adopted Apr. 1, 1993; released May 3, 1993).

2. National Cable Television Association, Inc. (NCTA) petitions for a "limited stay" of this effective date, until the end of the rate freeze on August 3, 1993.³ NCTA argues that one of the purposes of the freeze in effect until August 3 is to permit cable operators to make reasonable changes in service offerings in response to our rate regulations. It states that operators could not begin to do so until the text of our rate decision was released, and that even with its release on May 3, operators will not be able to effectuate responsive rate changes immediately because of the time necessary to absorb the lengthy text, assemble the requisite information and apply the formulas.⁴ NCTA adds that even after they are calculated, rate changes require time to implement -- to notify subscribers and prepare bills accordingly. It states that franchise agreements sometimes require 30 days notice (or longer) of rate changes, and also requests that we preempt state and local notice requirements inconsistent with the new effective date it requests.⁵ NCTA observes that with a freeze in effect, extending the effective date of rate regulation to August 3, 1993 poses no risk of interim higher rates.⁶

3. We continue to believe that prompt implementation of the provisions of the Cable Act will best further Congressional intent and serve the public interest. We do not wish to delay extending the Act's benefits to consumers. Therefore, because NCTA's request would have the effect of delaying the full implementation of the rate provisions of the Act for an additional six weeks, we deny the request.⁷ However, we also wish to avoid imposing a potentially unworkable implementation

³ NCTA Petition for Limited Stay of Effective Date (dated May 6, 1993) (NCTA Petition). Dow, Lohnes & Albertson filed a petition in support of the NCTA Petition. Petition in Support for Limited Stay of Effective Date (dated May 12, 1993). In addition, several cable companies filed comments in support of NCTA's petition. Comments in Support of the Petition of the National Cable Television Association, Inc. for Limited Stay of the Effective Date by Blade Communications, Inc. et al (dated May 11, 1993).

⁴ NCTA Petition at 1-4.

⁵ NCTA Petition at 4-5.

⁶ NCTA Petition at 5.

⁷ See generally Virginia Petroleum Jobbers Association v. FPC, 259 F. 2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

schedule and are concerned that some action may be warranted to prevent such an eventuality. In particular, we are concerned that local franchise notice requirements contained in certain local franchising agreements may at this juncture make it practically impossible for operators to meet local notice obligations while at the same time implementing rate adjustments responsive to our federal rules by the June 21 effective date. For example, we are aware that some agreements require cable operators to provide 30 days' advance notice of a change in rates or services at the local level. In order to allow for 30-day notice prior to new rates taking effect by the June 21 effective date of our rules, rate changes would have to be announced by May 21, less than three weeks after release of the text of our substantive rate decision. We do not believe that operators could, as a practical matter, react to the new regulatory scheme and fully implement responsive rate adjustments within such a constricted time frame, although we encourage operators to notify subscribers and the proper authorities of these implementing rate adjustments as soon as possible. We will therefore preempt any local franchise agreement or other state or local law or regulation to the extent that it requires an operator to give notice prior to June 21 of any rate change intended to comply with our rate regulations. This action should provide cable operators a reasonable initial period of time to respond to our new rules.

4. This limited preemptive action is within the scope of our authority under the 1992 Cable Act and is necessary to achieve our purpose of prompt effectuation of our regulatory scheme implementing the Cable Act.⁸ We emphasize that our preemption is quite limited in duration. We do not preempt such local or state notice requirements to the extent they apply after the June 21, 1993 effective date. Operators will also have to comply with our customer service requirements, including the obligation to give subscribers 30 days' notice of rate increases, which become effective as of July 1, 1993.⁹

5. We are also concerned that cable operators and subscribers alike may be disadvantaged if logistical obstacles prevent operators from providing prompt, formal notification of rate and service changes. For example, we are aware that some

⁸ See City of New York v. FCC, 486 U.S. 57 (1988); Fidelity Federal Savings and Loan Association v. de la Cuesta, 458 U.S. 141 (1982).

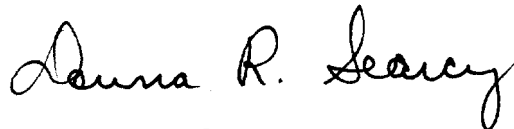
⁹ Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service, Report and Order, MM Docket No. 92-263, FCC 93-145 (Apr. 7, 1993), revised, Erratum, FCC 93-145 (released Apr. 15, 1993), 58 Fed. Reg. 21107 (Apr. 19, 1993).

systems operate with lead times of 30 to 60 days for the production of subscriber bills and other notifications. In addition, some systems use third-party contractors for billing purposes or have other business arrangements that present substantial difficulties in preparing and mailing notices on short notice. Therefore, we clarify that rates and rate structures will be deemed to be "in effect" if subscribers have been given at least some notification of such adjustments by that date, and if subsequent billing properly credits subscribers in a timely manner for the rates adjusted as of June 21. Thus, operators will have an additional reasonable period to prepare bills reflecting their new rates, provided that subscribers promptly are credited for these new rates as of June 21, 1993. We encourage operators to notify subscribers of their rate adjustments as soon as possible by any practicable means, such as newspaper ads or bulletins on the cable system. In order to be in compliance with the effective date, however, this notice must be given no later than June 21, 1993.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i), (j) and 47 C.F.R. § 1.45 (e), that the Petition for Limited Stay of Effective date by NCTA and the Petition in Support for Limited Stay of Effective Date by Dow, Lohnes, & Albertson ARE DENIED.

7. IT IS FURTHER ORDERED that any state or local requirements that cable operators give notice, prior to June 21, 1993, of rate changes intended to effectuate compliance with our rate regulations ARE HEREBY PREEMPTED.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

**Concurring Statement
of
Commissioner Andrew C. Barrett**

**In re: Implementation of Sections of the Cable Television
Consumer Protection and Competition Act of 1992: Rate Regulation**

I do not usually issue statements in conjunction with Commission stay actions. However, with this action today, I believe that there is a need to be more thorough in assessing effective date decisions when implementing complex proceedings such as cable rate regulation. In this case, it is not clear to me that the FCC has developed sufficient rationale to support a June 21 effective date for refund liabilities. I have seen no clear analysis which reflects the fact that we established the June 21 effective deadline based on a practical, market-oriented assessment of how much time it was likely to take cable operators to: 1. Analyze the impact of the Commission's large, complex rate regulation order; 2. Make adjustments to rates based on any channel lineup changes that may result from retransmission consent deadlines and negotiations; 3. Assess other Cable Act requirements with respect to their impact on rates, including the further notice of proposed rulemaking on the cable rate benchmarks; and 4. Make the necessary business decisions regarding rate configurations, billing and subscriber notification requirements. Without this type of analysis, I am less comfortable with the practical ramifications of imposing a June 21 effective date with regard to refund liability. At this point, it is not clear to me what harm would occur if the effective date of refund liability comported with the rate freeze period until August 3. If this implementation delay would have created some concern about interim rate increases after June 21, I would have preferred to deal more directly with that issue, while granting additional flexibility with regard to the effective date.

To the extent this Order grants relief from the 30-day local franchise notice deadline prior to June 21, I support it. I hope that this limited relief grants sufficient time to allow for legitimate rate regulation compliance efforts. However, I do not believe that the Order sufficiently explains the basis for a June 21 effective date deadline, in light of the market-based actions required to comply with our 475-page rate regulation Order, and the rate implications of other 1992 Cable Act requirements. As I have indicated in the past, I fully understand our responsibility to implement the 1992 Cable Act.¹ I will continue to engage in the full range of our enforcement

¹ See, Separate Statement of Commissioner Andrew C. Barrett, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 [Cable Rate Regulation], April 1, 1993.

responsibilities under the 1992 Cable Act. However, I also remain aware that companies need reasonable periods of time to assess the full impact of these complex regulations, bring their operations into compliance, and realign their employee efforts.² Given the complexity of our cable rate regulation Order, I concur in this action.

² See, Separate Statement of Commissioner Andrew C. Barrett, Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992--Program Access Provisions, April 1, 1993. [adopting 120-day period for transition]